

Summary
Wetland Mitigation Banking Advisory Team
February 3, 2000

***Note:** Rule sections referenced in this summary are for the 3rd Draft of WAC 173-700, dated November 30, 1999. Consensus decisions made by the team are enclosed in boxes to highlight them.*

Advisory Team Members Present: Merri Erickson, WA Cranberry Alliance; Barb Aberle, WSDOT; Dwayne Michel, WA Farm Bureau and DM Ranches; Bob Zeigler, WDFW; Sono Hashisaki, Springwood & Associates; Paul Roberts, City of Everett; Kevin Noon, Critical Habitats; Nancy Brennan-Dubbs, USFWS; Jennifer Thomas, King County; Bill Lewallen (for Jodi Slavik), BIAW; Kathy Combs, WA Wetlands & Mitigation Company; Gail Terzi, US Army Corps of Engineers

Advisory Team Members Absent: Ron Shultz, National Audubon Society; Steve Erickson, WA Native Plant Society

Ecology Staff Present: Lauren Driscoll, Teri Granger, Patricia Johnson, and Andy McMillan

Other Interested Parties Present: Dean and Don Swanson, Farmers; Lennie Rae Cook, Pacific International Engineering; Jeff Meyer, David Evans & Associates; Devon Michel, DM Ranches; Key McMurry, Shoalwater Bay Tribe; Wood Turner, Springwood Associates; Charles J. Newling, Wetland Science Applications, Inc; Heather Roughgarden, WSDOT; Bob Landles, City of Everett.

Meeting Materials: February 3, 2000 Agenda, Draft December 15, 1999 Meeting Summary, Consensus Process Document, Guiding Principles (reprint), Key Issues/Positions Matrix.

Opening Announcements:

Teri Granger began the meeting by introducing herself and reviewing the meeting process, such as the role of the facilitator (keeping things on track while being neutral) and the role of the team (working toward resolution and assuring that the main points are accurately recorder on the flipcharts).

Granger stated that the meeting was to be recorded on tape in addition to handwritten notes. Granger would be writing main points on flip charts. A volunteer was appointed to monitor the tape recorder and change tapes when necessary. A specific flipchart was established as a “parking lot” for items that were not directly related to the current discussion. In this way, the discussion could stay on track while tangential yet important points would not be forgotten.

Granger reviewed a number of meeting ground rules, and stressed that Consensus means: Can I Live With This? It was stated that if consensus was not achieved, the team would outline different positions and alternatives. A team member questioned whether consensus equals unanimous agreement? Ecology replied, yes, that consensus does mean unanimous agreement. It was further questioned how member absence would be handled. Would those present make decisions? Lauren Driscoll replied that members are responsible to be present and represent their position or viewpoint as agreed to by the team at the December 10, 1998 meeting in the Administrative Details document.

It was mentioned that there was a legislative hearing about banking concurrent with the day's meeting. For those not present, Driscoll suggested an afternoon re-cap of any decisions made in the morning. Granger reviewed the goal and purpose of the meeting, and pointed out a revised meeting agenda (written on flipcharts at the front of the room). A volunteer was appointed to help monitor time.

Lauren Driscoll announced that Bill Lewallen would be substituting for Jodi Slavik of BIAW. Driscoll also announced that Lynn Micheau was no longer with Grays Harbor Economic Development Council, and therefore would no longer be a member of the team.

It was announced that NFMS would have a 4d-rule meeting after the banking meeting and that a planned rally at 4:30 p.m. by the Farm Bureau may affect parking and the meeting schedule. It was suggested that meeting attendees should move their cars to the back parking lot of the Ecology building at the lunch break.

It was more specifically announced that the Senate Environmental Quality and Water Resources Committee would conduct a hearing from 10:00 a.m.-12:00 p.m. today on four bills that would impact Wetland Banking. It was stated that several team members would be attending those hearings in order to testify, therefore, more members were anticipated after lunch.

Driscoll announced that the MOA meetings were progressing, with preliminary consensus on the goals of the document. The next meetings would focus on outlining the Mitigation Bank Team Review (MBRT) process.

Driscoll asked if members had received and reviewed the Draft December 15, 1999 Meeting Summary. There were no comments or corrections from the team or the audience, therefore this draft would be finalized.

Driscoll recapped the decisions from the last meeting:

- The team shall strive for consensus within a specified time limit. At the end of that time, the team shall decide to either allow more time or outline positions and/or alternatives.
- The team requested that Jennifer Thomas' alternative rule proposal be distributed to the team.

Working Through the Rule

Driscoll reviewed the process to work through rule, and what happens after the team wraps up.

- Team works through rule.
- Team wraps up (March 30?).
- Ecology finalizes rule draft (June?).
- Ecology files the final rule draft and draft EIS on the rule.
- Public hearings to be held across the state on both the rule and the EIS, and a 30-45 day written public comment period.
- Ecology writes concise explanatory statement (estimated to take 2-3 months).
- Ecology files final rule (Fall 2000) or if substantive changes occur then Ecology must re-file and go through the public hearing and comment period again.

A team member questioned what kind of comments would result in substantive changes. Driscoll replied that Ecology was not anticipating substantive changes. As long as Ecology can adequately address comments there would be no need for substantive changes. It was also mentioned that there was no need for any Legislative action to finalize the rule, but the legislature must have the opportunity to look at it.

Regarding Jennifer Thomas's rule alternative, Teri Granger explained that Ecology was suggesting using Ecology's November 30, 1999 draft and incorporating Thomas' comments into that draft where applicable. A team member mentioned that she had seen a few people's comments (Steve E., Bob Z., and Linda Storm, EPA) regarding Thomas' alternative, and she questioned if there were any other comments. It was replied that no further comments had been submitted concerning the alternative rule proposal.

Granger identified the process through which to work through the rule. First the team would decide to go through the rule sequentially or prioritize important issues. Then team members would be asked to identify their concerns with the given rule section (lump if related). Then the team would identify potential solutions to each concern, and incorporate decisions about over-arching issues. Then the team would choose a solution that the group can live with and finally, the team would be polled to ensure that consensus was reached.

Regarding word smithing, Ecology mentioned that the goal was to reach conceptual agreement. Trying to craft specific language could take up too much of the team's time. If specific language was the point of disagreement it was stated that a volunteer would be requested to try to craft language which would address the identified concerns.

Regarding Thomas' rule proposal and some of the comments made about it, Thomas stated that Zeigler's comments were conceptually in agreement with most of the proposed alterations. She was not sure why he disagreed so strongly with the proposal. This raised the issue that one person's "concept" may not be the same as another's, therefore, it was stressed that the emphasis should not only be on consensus but ensuring that conceptual agreements are thoroughly aligned.

Audience Participation

Regarding audience participation, Granger identified the audience as observers. This was a change from previous meetings in which time was allowed for their individual comments during each discussion. Ecology suggested that the audience could pass on information to individual team members, or if the team agreed that it was stalled, suggestions could be sought from the audience. A team member was not comfortable with this and suggested that the audience be given time to make comments. Driscoll replied that the team has a limited time to finish the rule development process. Driscoll agreed that the audience has had very useful comments and would encourage them to relay their suggestions or comments to appropriate team members. It was stated that there was a trade-off between audience participation and team member discussion time.

A team member suggested that before a consensus poll, the discussion should be opened to the audience for dissenting opinions that have not been mentioned. Another suggestion was made to allow 5 minutes to the audience after a consensus poll, so that the audience could dissent if need be. It was questioned how dissenting opinions would be incorporated. It was responded that after audience dissension, the team should be re-pollled to see if audience comments have changed the consensus of the team.

Everyone on the team could live with this approach: Consensus poll, then audience time for dissenting opinions and re-poll of team.

Summaries

Ecology mentioned a new policy regarding how polls and opinions will be recorded. Starting this meeting, when a consensus poll is taken, dissenting positions will be recorded in the summary by team member name and/or agency or organization affiliation. This is meant to allow the process to be transparent so that the public can follow it.

Sequencing – How to Work Through Rule?

Granger mentioned that the team could work through the rule sequentially (section by section) or prioritize the sections and do the most important ones first. It was stressed that there were three meetings currently scheduled, including the present meeting. It was stated that if the team runs out of time, it could decide to allot more time to an issue and/or more meetings. A team member questioned how much time was allotted for prioritization? Ecology responded that Driscoll had the sections written out and team members could dot their choices. The expressed concern that assigning time for each issue would take more time.

Advisory team comments on prioritization were as follows:

- A team member pointed out that there are three meetings, and there is no way to get through all sections. It was questioned whether there were some sections where consensus had been reached. Ecology replied that there might be some areas that the team may already have consensus. It was suggested that the agreed upon areas should be identified and kicked off the list. A team member suggested to do the dot thing and those without dots or with 1 dot the team should quickly go through them to see if there is general conceptual consensus, and leave it to Ecology.
- Regarding the position matrix, a team member mentioned that the team still must resolve the issue of which draft to use and how the team will merge opposite ends of the spectrum.
- A team member suggested highlighting the main areas on the position matrix as the priorities for discussion. Those issues need to be resolved and anything left over that people have a problem with will be dealt with later.
- A team member stated that the team should try to close the issues upon which consensus has been achieved.
- A team member suggested that credit release should be 1st since that has not yet been discussed.
- Granger suggested that the team should prioritize the priorities on the matrix.

Priorities For Discussion:

- 1 Release of credits – 11
 - 2 Incentives – 11
 - 3 Buffers – 8
 - 4 Service area – 2
 - 5 Certification Process – schedule– who does what and when– 2
 - 6 Credit ranges – 1
 - 7 Preservation
 - 8 Public participation – 0
 - 9 Use of credits – 0
 - 10 Monitoring – 0
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- A team member suggested adding education. She wanted to make sure that it was addressed. Ecology replied that that topic should be put in the parking lot.
 - A team member stated that SEPA was an issue. There needs to be a flowchart of how SEPA timeframes will fit in with certification timeframes and how it will all work. Ecology says it can't commit to timeframes for the certification process due to lack of staff. SEPA process will be a very important part of certification. Driscoll responded that those interested in the SEPA issue should join an email group. It was stated that there would be a meeting on integrating SEPA and certification. It was therefore suggested to wait to address SEPA until after the sub-committee has met, probably at the end of February. It was agreed to move SEPA to the parking lot
 - A team member questioned where the debit side of things was addressed. Ecology replied in section 800 - Use of credits.
 - Driscoll mentioned that Release of Credits had not been discussed yet. She questioned whether the team should decide to wait for more members to come in the afternoon. The team agreed to follow the prioritized list regardless of the lack of some team members.

The team previously requested time allotments on issue discussions due to the lack of meeting time. Driscoll mentioned that the team had a total of 12 hours of discussion time. People should be aware of the meeting time limits. A team member suggested that all issues should start with 30 minutes allocated and then the team could decide later to allow more time. It was agreed to start with 30 minutes for the first issue and check in with the team after that.

A team member questioned which rule version to use in discussing the various issues. It was suggested to talk about the relevant issues, for there was not much conceptual difference between rule alternatives. After the issue discussion, decide which rule version addresses the consensus position best. Ecology suggested that it is imperative to have a baseline to which all team members are referring. Thomas' document was not in rule format and as such would be difficult to use as the baseline unless reformatted in rule format. Another team member stated that the rule versions have style differences, and they differ in tone and approach -incentives versus impediments to implementing on the ground. It was stated that the legislation says to do these things (facilitate and support banking).

Granger mentioned that tone and approach are overarching issues. She explained that the team needed to identify overarching issues, such as rule versus guidance and tone. Once identified, the team should keep them in mind when working through the prioritized issues. A team member stated that the issue discussion should start immediately. Another team member stated that the overarching issues would come out as the prioritized issues are discussed. A team member stated that Driscoll has agreed to put Thomas' rule proposal into rule format. There was a belief that a hybrid of the two versions would result in consensus.

The team suggested the following process for working through the rule:

1. Dive into prioritized issues.
2. Discuss and decide on overarching issues as we go along.
3. Use both documents side by side.

Release of Credits 604

Driscoll reviewed how she put together the position matrix. She went through stacks of comment letters and meeting summaries and pulled out the items in the "positions" column. The "concerns" column was meant to get at the underlying concern behind the positions. Driscoll stressed the need to get to conceptual concerns and address those instead of focusing on positions. She stated that there were probably concerns that she had inadvertently overlooked and asked the team to bring up any additional concerns that should be added to the matrix. She recommended that team members keep in mind that a solution may be present but not immediately apparent, and she urged team members to be open-minded and help develop alternatives that could address the concerns of other team members.

Advisory team comments on credit release were as follows:

- A team member stated that the current rule draft views wetland banks in a singular dimension – concern about failed banks. It was stated that where banks are successful they are in good locations etc. It was stated that the releasing of credits is not unrelated to the circumstances of the bank and the sponsor. The team member stated that there are two major issues affecting banks:
 1. Circumstances of bank - site conditions, risk factors, use of creation etc.
 2. Bank sponsor – a public entity has opportunity for bond and insurance that private bankers may not have.
- A team member stated that to address concerns of risk and flexibility; the MBRT should use authority to form a judgement, deciding how much to release and when. The MBRT should craft the Banking Instrument with some structure and criteria (in guidance rather than the rule). A team member commented that everything should not be written in the rule.
- Driscoll had two questions for the team:

1. The rule now has sideboards, does the team want to leave the rule wide-open to the MBRT?
 2. Does the team want any sideboards on specific elements?
- A team member stated that he did not object to some sideboards for the MBRT to operate within, but that the MBRT should ultimately decide on the specifics on a case-by-case basis.
 - Another team member agreed, but stated that there needs to be a little predictability. Without some sideboards there is no predictability for bankers. The team member agreed with the Federal Guidance, which has built in flexibility to allow releases on a case-by-case basis. Other team members agreed that the rule needs to provide predictability for bank sponsors to know that if an investment is made that the money will be gotten back.
 - A team member commented that she would not like to see public banks get preference over private banks. A team member responded that he was not referring to preference, but assurances and enforcement.
 - A team member recommended up to 50% at As-Built, up to the discretion of the MBRT – but no more than that. This would provide flexibility and predictability.
 - Driscoll agreed with flexibility and some sideboards to provide some predictability. She stated that was the intent of the 11/30/99 draft in this section. Driscoll clarified that perhaps the 11/30-draft rule just needs to emphasize more that the MBRT is deciding these things.
 - A team member stated that the current rule is too prescriptive.
 - A team member suggested that the rule language allow the MBRT to make decisions, provide them with criteria to decide, and then set some sideboards for predictability.
 - A team member questioned how this proposal differed from what was written in the 11/30-draft. A team member responded that the rule draft was very incremental.
 - It was stated that if percentages were in the rule, it wouldn't be applicable to every bank out there. Criteria will provide predictability without limiting the MBRT's flexibility.
 - Ecology wanted to know what in 11/30-draft rule had too many steps? At what points should the rule have sideboards?
 - A team member equated reducing the steps to picking a critical path for bank success. Another team member replied that the critical path is different for a creation bank than for a preservation bank. It was stated the critical path could be compressed to three items in the process – signature, hydrology, final performance standards. Ecology responded that the critical path should guide the structure of the sideboards.
 - It was agreed that the team would help to identify the criteria that the MBRT would base their decisions on, and identify the critical points in the path to establish where sideboard should be.
 - A few team members reiterated the need for predictability to encourage investment. It was stated that by reducing the number of steps in the critical path it reduces predictability.
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| ▪ Consensus was achieved on the conceptual framework. |
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- It was mentioned that the team had already gone beyond the 30-minute time limit. The team agreed to keep going.

The team agreed that the Sideboards should set the upper limit for release, and the Criteria should be the basis for the MBRT making decisions. Both of which should be consistent with the Federal Guidance.

The team agreed that the Critical Path points should be established as:

1. Signature on the Bank Instrument.
Financial Assurance/Long Term Management (LTM)
Bank site ownership. (Section 604(5)(a) in 11/30-draft rule)
2. As-builts (Section 604(5)(b))
3. Hydrology performance standard (Section 604(5)(c))
4. Other Performance Standards (Section 604(8))
5. Final Release at attainment of all Performance Standards (Section 604(5)(d))

- A team member stated that hydrology is built in from start. It needs to be achieved at critical path point (3), but for creation it comes into play for all previous points. The team member commented that if a bank is assured of hydrology then that plays into all other critical path points.
- It was stated that release of credits is more complicated than just putting numbers on paper. It requires site visits to see if all the steps (or points) are met. A team member responded that if it is in the rule, then someone has to go out there and do a site visit. It was further stated that by leaving all decisions to the MBRT, then someone has to review attainment of the credit release point. For example, hydrology, or success of plant material, etc. must be reviewed by the MBRT. It was suggested to limit the critical path points because otherwise the MBRT must review it all, and it would be a job organizing it.
- Ecology stated that the MBRT must make decisions about what Performance Standards are appropriate to include in the bank instrument. Whether the MBRT needs to make multiple site visits should be up to the MBRT. Ecology suggested using credit release as an incentive for adaptive management. For example, a banker would need to meet a certain performance standard to get an agreed upon release, but leave the rest of it up to the MBRT. Ecology also suggested getting rid of critical path point (4) "Other performance standards".
- A team member stated that a bank could meet the hydrology standard one year, get a release of credits and then afterwards the hydrology is gone and the site fails miserably. She suggested using the language in Thomas' rule proposal version. Year 1 or year 2 hydrology data does not mean that the performance standard will be met at year 5. It was stated that there is a need to build in site visits for release of credits. Another team member responded that the hydrology example relates to all the site information presented to the MBRT in Bank Instrument discussions.
- Ecology pointed out that hydrology concerns were addressed in section 605(4) and on p.29 of Thomas' rule proposal document.

Public Comments

The audience had no comment on the team's credit release decisions.

The team agreed to allot another 30 minutes to the credit release discussion, and team discussion continued as follows:

- A team member suggested doing percentages and then passing it on to Lauren Driscoll to draft it into language.
- A team member suggested no release of credits before the mitigation is built. As-built approval and release contingent upon MBRT review. Then 40% release at as-built approval, and 10% release upon approval of the attainment of the hydrology performance standard. It was stated that in the rule it should indicate that "credits can be released in excess of these percentages on a case-by-case basis in exceptional circumstances." Another team member responded that the federal guidance recommends flexibility for early release. The team member replied that banking needs to be a step better than previous mitigation efforts, even though the federal guidance states that in exceptional circumstances early release may be warranted. The other team member agreed philosophically but stated that the state rule must be consistent with the federal guidance.
- Ecology requested that the team revisit the critical path points, which indicated that there could be potential release at those steps. Ecology questioned whether there was a suggestion to get rid of 1st point in critical path. A team member clarified that as-built approval assumed the 1st point was met.
- A team member was in favor of strengthening the role of the MBRT. Give them criteria and they should decide. Early release of credits is a tool that the MBRT should have. The rule shouldn't tie their hands. The team member was uncomfortable with a state rule limiting the federal guidance or limiting the options for the MBRT.
- It was stated that there was an economic disadvantage to some sponsors if early release was no longer considered.

- Ecology pointed out a couple of issues with early release. 1) Risk to environment. 2) Equity with concurrent mitigation. Ecology stated that there is a need to balance the risk with financial assurance and leave it to MBRT discretion to determine when it is applicable or when to limit use of credits before construction.
- A team member stated that when preservation was part of a bank, credits from preservation should be released at Bank Instrument signing.
- A team member requested flexibility for the MBRT to decide credit release percentages. Release of credits may occur at the points identified in the critical path (Section 604(5)(a),(b),(c), and (d); but it was questioned if the team wanted percentage sideboards in the rule, in guidance, or not at all. It was stated that there should be predictability in the rule.
- It was stated that there should be certainty for a banker that at As-Built approval a banker would get the 40%. It was responded that rarely is an As-Built done the way it was designed, maybe graded differently or whatever, but field changes may affect the release of credits.
- Ecology recommended the release at as-built to be up to 40%, rather than minimum or absolute 40% release.
- A team member mentioned that the Federal guidance states that early release “may justify the need for requiring higher compensation ratios” and that “initial physical and biological improvements should be completed no later than the first full growing season following initial debiting of a bank.”
- A team member suggested 50% at As-Built. It was responded that 50% was too high. Half of credits released, but the bank is not halfway to functional maturity or performance standard attainment at As-Built. The team member suggested 40%. Ecology agreed that 50% at As-Built was too high. 50% would be okay once the hydrology standard was attained.
- The team member from King County mentioned that King County banking regulations allow 25% at As-Built, 25% at hydrology - remaining 50% at final Performance Standard attainment.
- A team member suggested 50% at As-Built if the hydrology was already there. It was commented that 50% would be a big incentive to take care of a site. It was responded that there could be a lag time between As-Built approval and hydrology attainment. The team member replied, not for restoration or enhancement. Ecology suggested up to 50% for hydrology.
- A team member stated that this undermines As-Built. A year of work and what is the return? Ecology responded that as-built release could be as high as 40%, depending on the project. The MBRT would decide. The team member replied that by the nature of approving As-Built, there should be a substantial release. Another team member responded that the percentage of release would be determined by the MBRT up to the established sideboard.
- A team member questioned what about early releases prior to As-Built. It was responded that that was an option, but it would be up to the MBRT to decide to do this.

Consensus by team:

Up to 40% at As-Built (Section 604(5)(b))

Up to 50% at Hydrology (Section 604(5)(c))

Public Comments

Audience member comments on credit release percentages were as follows:

- An audience member questioned how creation banks would have credits released. It was responded that it would be up to the MBRT.
- Another audience member questioned about incentives. It was stated that it might be part of the sideboards that the MBRT considers.
- An audience member questioned how much financial assurance should remain after As-Built approval or after the bank is functioning. The audience member stated that if a banker does not request a release of credits prior to construction that they should not be required to post a financial

assurance. This concern was placed in the parking lot to come back to during the discussion on financial assurances.

Advisory team discussion of credit release proceeded as follows:

- Ecology stated that there should be an incremental release of remaining credits up to attainment of final Performance Standards.
- A team member questioned the possibility of getting more credit if a bank exceeds Performance Standards.
- Ecology responded that subsection 173-700-604 (9) was aimed at allowing more credit to be awarded by the MBRT for exceeding performance standards as well as allowing the final number of credits at the bank to be reduced if the bank was unable to attain all of its performance standards. She suggested that it might be clearer to break up this subsection into two sections and clarify the language. The rule should clearly specify that:
 1. If you meet all P.S. you get all your credits as agreed to in the bank instrument.
 2. If Banks performance goes beyond performance standards more credits may be provided by MBRT (Section 604(9)).

Consensus: The team agreed that 100% of credits should be released when the bank meets all Performance Standards. (Section 604(5)(d)).

- A team member suggested up to 25%, as decided by MBRT, for early release. Leave it flexible. Another team member agreed that in some circumstances 25% before construction would be okay.
- Ecology stated that there is no percentage on the early release language suggestion that was put up on the flipchart. It was suggested that the rule could say that in exceptional circumstances the MBRT may choose to allow early release of credits - this way it would not automatically be excepted by bankers, a way to manage expectations while leaving it open and flexible. A team responded that the rule should set the bar high. By not including percentages at all there isn't a sideboard, and therefore the MBRT may not give an early release at all. A team member responded that the rule language should be consistent with federal guidance. "In exceptional circumstances the MBRT may allow an early credit release, determined case by case where it fits, that may require higher replacement ratios. Another team member agreed with that suggestion.
- Ecology questioned how the rule should deal with higher replacement ratios. Bank Instruments could say that the permitting agency should require more credits for an impact that uses bank credits released prior to construction, or that the credit determination rate could be different. A team member did not want to talk about the debit end. A team member wanted to know why ratios should be messed with. He questioned why there could not be a smaller number of credits? It was clarified that the discussion should change ratio to rate.
- A team member stated that "exceptional circumstances" equates to pre-construction release being rare and that it may never happen. It would not be a standard.
- A team member pointed out that this manner of dealing with the release of early credits (*requiring higher replacement ratios for early release credits*) would be a penalization, because credits would only be worth half their value and this would only be done for exceptional banks.
- Ecology stated that this was a different approach than the team had discussed previously. If "exceptional circumstances" was to be used in rule language then it would need to be defined or have criteria provided for determining what constitutes exceptional circumstances. A team member suggested changing "exceptional" to "some cases". A team member voiced concern that the November 30 draft gave some assurances that early credits would be released, but the language suggestion of special or exceptional circumstances generated some doubt as to whether any credits would be released.
- A team member suggested using the federal guidance language that states that "decisions to allow credits to be withdrawn from a mitigation bank in advance of bank maturity be made on a case-by-case basis taking into consideration the particular ecological and economic circumstances of each

bank”. It was suggested to use federal guide language which does not mention “exceptional”. “Where circumstances warrant, it is generally appropriate, in cases where there is adequate financial assurance and where the likelihood of the success of the banks is high, to allow limited debiting of a percentage of the total credits projected for the bank at maturity...” and give examples in the guidance of when it would be warranted.

- Ecology pointed out that in order to get an early credit release a banker needs to post a construction bond.

Consensus on early release: the team agreed to tweak the federal guidance language for the rule and give examples in the guidance of when it would be warranted.

Public Comments

Audience member comments on credit release decisions were as follows:

- An audience member requested that an example be given of where an early release of credits would be warranted. A team member replied with the example of a bank involving some preservation. Ecology clarified that release of preservation credits is addressed separately.
- An audience member recommended that in tweaking the federal guidance language for early release, the mention of economic considerations should not be removed. Ecology responded that the language needed word smithing. Driscoll would work on it and email it out to the team for comments.
- Andy McMillan reiterated that the environmental representatives were absent at the day’s meeting, but that they were very concerned about the issue of early credit release. He stated that early release of preservation credits was addressed separately in the rule. Otherwise it would be an exceptional circumstance to receive an early release, and economic circumstances should not be a consideration. He urged the team to manage bankers’ expectations and not to run the risk of having the rule appealed because of early credit release. He recommended that there should be more in guidance.
- An audience member commented that, as a banker, he would not expect to get something for nothing (e.g. an early credit release), but he would like to be assured that if he does something and meets the performance standards that he would get the established credit release.

Advisory team members maintained their consensus poll regarding early credit release.

- Driscoll questioned if the team wanted to list the criteria by which the MBRT was to make their decisions. She also questioned if that list should be in the rule or in guidance. A team member suggested that it should be in guidance. Another team member stated that at least the biggest considerations should be in the rule with a reference to the guidance for further information. She suggested the following language, “may include but are not limited to”. Driscoll offered to work on the list with the help of a few other team members.

Incentives

Driscoll began the incentives discussion by stressing that incentives can make or break banking in Washington. Without incentives, competing with concurrent mitigation would not make sense economically. Driscoll mentioned sections in the 11/30-draft rule where incentives are currently built in:

- 604 (8) incremental releases of credits
- 604 (9) more credit for going above and beyond
- 603 Credit determination conversion rates.
- 605 Performance Standards and phased release of credits.

A team member mentioned that Thomas’ rule proposal had different wording, and she suggested that the rule include a list of incentives. Then the MBRT could decide on a case-by-case basis whether or not the incentives apply, which ones apply, and how they should be applied. It was stated that the main difference was that incentives should be decided by the MBRT. A team member recommended that the rule list incentives.

Consensus: The team agreed to list incentive types and it would be up to the MBRT to decide, case by case, whether any applied and how much.

Public Comments

Audience member comments on incentives were as follows:

- An audience member suggested that a sponsor should be able to propose a new incentive that is not listed for the MBRT to consider. It was stated that the non-use of early release of credits should result in a reduction of financial assurance (for construction).
- An audience member suggested breaking it out into things you get incentives for and types of incentives. A team member suggested programmatic incentives and project specific incentives.
- An audience member suggested that a list of incentives be in guidance not in the rule. A team member agreed. A team member questioned if an incentive such as education would be explained enough in guidance.
- It was questioned if there should be a limit on the percent of extra credit given, or the percent of additional credit value of bank.

The advisory team then brainstormed a list of incentives and the type of incentive to be given, which were as follows:

- Environmental Education - credits
- Public Access – credits
- Exceptional performance (exceeding Performance Standards) - credits
- Exceptional site selection (sites identified as high priority for restoration) - credit release and/or Service Area
- Urban wetlands versus rural – Service Area or credits
- Recalculating or renegotiating credits for successful creation after Performance Standards have been met - credits
- Watershed plans - service area or credits
- Endangered & Threatened species habitat – credits
- Connectivity

Public Comments

Audience member comments on the incentives list were as follows:

- An audience member stressed that a rural site should not get less credit just because it is located in a rural area.

Advisory team discussion of incentives proceeded as follows:

- A team member suggested that additional incentives should be sent to Lauren Driscoll. It was suggested to put the incentives list and discussion in guidance, but for incentives that provide credits there needs to be language in the rule or a reference to the guidance. A team member responded that since the credits will be determined by the MBRT, the incentives should be in the rule.
- Ecology suggested that in section 603 (5) education could be included, as an example of how to put it in the rule
- Ecology explained that there was a legal problem with referencing guidance in the rule. It was suggested to put it in the rule and explain it in detail in guidance. Ecology recommended putting an incentive piece into rule, and then in guidance have a list of incentives and reference where in the rule to find it. A team member responded by suggesting that a full list of incentives be included in the rule in one section, and then further flesh it out in guidance rather than mixing and matching incentives in different sections of the rule.
- A team member stated that the incentives for increasing function and values were mixed. He requested clarification on the incentives list.

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- It was requested that incentives have a separate section or subsection in the rule to list them. It was questioned where in the rule this list should be put, section 603 in credit determination or 604 release. It was suggested to put it in both areas. It was stated that this would not preclude cross-referencing and mentioning incentives in other parts of the rule.

Consensus: The team agreed to having a list of incentives in one area and cross-referencing to other sections.

- Driscoll stated that she would figure out where to put a list of incentives and list where in the rule some are already addressed. A team member added how and where the incentives would be used and the context in which they apply.
- A team member stated that the MBRT could increase credits when there was an increase in functions and/or values.
- A team member questioned if team members agreed on the existing incentives list. A team member responded that perhaps urban versus rural should be removed. Another team member suggested deleting rarity of wetland type in the area. She was willing to work on language with Driscoll for the next meeting.

Meeting Wrap Up

Driscoll stated that language will be sent out on email.

The next Wetland Mitigation Banking Advisory Team Meeting will be held **Thursday, March 2, 2000 9:00 a.m. - 4:30 p.m. at Ecology Headquarters in Lacey, auditorium rooms ROA 34 &36.**

The following meeting is scheduled for Thursday, March 30 9:00 a.m.- 3:30 p.m. at Ecology Headquarters.